

## **EXHIBIT 21**

JAMES SHEVLIN  
U.S. BANK NATIONAL -vs- DEXIA

January 29, 2014

1

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 U.S. BANK NATIONAL ASSOCIATION, :

5 as Trustee for the Registered :

6 Holders of Wachovia Bank :

7 Commercial Mortgage Trust, :

8 Commercial Mortgage Pass- :

9 Through Certificates, Series :

10 2006-C28, acting by and through:

11 its Special Servicer, CW :

12 CAPITAL ASSET MANAGEMENT, LLC, :

13 Plaintiff, :

14 -vs- : Case No.

15 DEXIA REAL ESTATE CAPITAL : 12-cv-09412-SAS

16 MARKETS f/k/a ARTESIA :

17 MORTGAGE CAPITAL CORPORATION, :

18 Defendant. : Pages 1 - 132

19 -----x

20 Deposition of James Shevlin

21 Washington, D.C.

22 Wednesday, January 29, 2014



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17-20

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| <p style="text-align: right;">Page 17</p> <p>1 accumulate all our concerns, and then send out<br/>2 questions to the issuers before we would finalize<br/>3 our bid for the tape. Then once we were<br/>4 successful bidder and we decided maybe what deals<br/>5 might not be included, we then got a finalized<br/>6 tape, and then we would assign those out<br/>7 accordingly.<br/>8 Q So in that process, would it be common<br/>9 to have the original loan documents from the<br/>10 origination to look at?<br/>11 A In which process?<br/>12 Q In the process that you just described<br/>13 to me of underwriting?<br/>14 A No. The initial tape review, no, you<br/>15 do not have loan documents.<br/>16 Q After the initial tape review, was<br/>17 there another step in the underwriting process?<br/>18 A Right. Once we were assigned and we<br/>19 won -- we circled the deal, that's when we would<br/>20 get the loan documents and the third-party<br/>21 reports and all the accompanying information to<br/>22 underwrite the transactions.</p> | <p style="text-align: right;">Page 19</p> <p>1 A Possibly. Not all the time we got<br/>2 that because a lot of loans still weren't closed.<br/>3 So we never really got the final loan docs a lot<br/>4 of times.<br/>5 Q So it might be financial information<br/>6 about the borrower?<br/>7 A Rent rolls, operating statements,<br/>8 potentially personal financial statements, yeah,<br/>9 and then every asset had like what they called an<br/>10 ASR, asset summary report, that was provided for<br/>11 each deal.<br/>12 Q Who provided the ASR?<br/>13 A The originators.<br/>14 Q I think you testified that in roughly<br/>15 90, 95 percent of the pools that American<br/>16 Capital's invested in, it's the controlling --<br/>17 the controlling certificate holder?<br/>18 A That's correct.<br/>19 Q And as the controlling certificate<br/>20 holder, does American Capital have certain rights<br/>21 with regard to how that loan pool is managed?<br/>22 A Yes.</p>  |
| <p style="text-align: right;">Page 18</p> <p>1 Q So -- because this is just a little<br/>2 bit different from what we discussed this<br/>3 morning, first you would just get a tape?<br/>4 A We would get a tape, a data tape, that<br/>5 had a ton of information, a ton of fields of<br/>6 location, tenants, whether it was recourse or<br/>7 not, things like that.<br/>8 Q And at that point would you say well<br/>9 some of these loans are out and we're only going<br/>10 to continue the underwriting process with this<br/>11 group of loans?<br/>12 A That's possible.<br/>13 Q Okay.<br/>14 A Right.<br/>15 Q And so then once you went on to the<br/>16 next step, that included actually reviewing<br/>17 specific loan documents -- well, we'll start<br/>18 there. Reviewing --<br/>19 A It was a more in-depth review you were<br/>20 able to do at that point.<br/>21 Q It might have included, for example,<br/>22 the actual notes?</p>   | <p style="text-align: right;">Page 20</p> <p>1 Q Based on what? Where does it get<br/>2 those rights?<br/>3 A From the PSA, the purchase and sale<br/>4 agreement.<br/>5 Q As the controlling shareholder --<br/>6 excuse me -- controlling certificate holder,<br/>7 before the pool is created, does American Capital<br/>8 have the ability to -- I think the terminology<br/>9 that's used is kick out a loan from the pool?<br/>10 A Do we have the ability? Can you<br/>11 define like "ability"?<br/>12 Q Well --<br/>13 A We don't have the automatic kick-out<br/>14 right. We bid our deals -- you'll find what our<br/>15 competition did. They may have bid a bucket<br/>16 where they may say Okay, we're going to agree to<br/>17 kick out \$20 million -- this is just an example<br/>18 -- worth of loans. We never bid that in our<br/>19 letters. Everything was kind of free game. But<br/>20 you know, do you have -- do you have an automatic<br/>21 right to kick things out? No.<br/>22 Q And I understand there's not like some</p> |

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| <p style="text-align: right;">Page 21</p> <p>1 contractual right to kick things out.</p> <p>2 A That's right.</p> <p>3 Q When you're determining -- American</p> <p>4 Capital ultimately could determine not to invest</p> <p>5 in a pool if there were loans in it that it did</p> <p>6 not want to invest in, correct?</p> <p>7 A Correct.</p> <p>8 Q And so in discussions with originators</p> <p>9 or whoever is putting -- whoever is attempting to</p> <p>10 place the loans in the pool, American Capital can</p> <p>11 negotiate with those entities about whether or</p> <p>12 not it would like for a specific loan to be in a</p> <p>13 pool; is that correct?</p> <p>14 A That's correct.</p> <p>15 Q And if American Capital says to one of</p> <p>16 those originators this -- this is not a loan that</p> <p>17 we want to be in the pool, is it still possible</p> <p>18 for that loan to be in the pool?</p> <p>19 A Yes.</p> <p>20 Q And has that happened in your</p> <p>21 experience?</p> <p>22 A Yes.</p>   | <p style="text-align: right;">Page 23</p> <p>1 Q What does the yellow indicate?</p> <p>2 A Red and yellow really -- there wasn't</p> <p>3 much of a distinction between the two. It needed</p> <p>4 to be green to be in the pool that we would</p> <p>5 accept. A yellow meant that there was just very</p> <p>6 minimal information that was needed to be able to</p> <p>7 support our final conclusion. It could be we</p> <p>8 were just waiting on some document.</p> <p>9 Q And a red loan meant you didn't want</p> <p>10 to include it in the pool?</p> <p>11 A We have some issues.</p> <p>12 Q At least while --</p> <p>13 A We're not saying that it would not be</p> <p>14 included in the pool, just that there's major</p> <p>15 concerns. You need to get us comfortable with</p> <p>16 the deal.</p> <p>17 Q While a loan is designated as red,</p> <p>18 does that mean that as of that time you are</p> <p>19 saying it's not going to be in the pool?</p> <p>20 A No.</p> <p>21 Q No?</p> <p>22 A No. Until the final day, you know,</p> |
| <p style="text-align: right;">Page 22</p> <p>1 Q And what would cause that to happen?</p> <p>2 A When we first get the -- after our</p> <p>3 initial review, we're assigning different ratings</p> <p>4 to the deals: the red, yellow, green. We may</p> <p>5 identify 30 reds, and we're probably seeing what</p> <p>6 sticks against -- what will stay. But we know at</p> <p>7 the end of the day, you have to have a pool. You</p> <p>8 just can't kick everything out.</p> <p>9 What it does, it starts a discussion</p> <p>10 of let's get some of these questions answered</p> <p>11 that may be a reason why we marked it red. It</p> <p>12 could be because we don't have the legal docs. It</p> <p>13 It could be that we don't have a rent roll. It</p> <p>14 could be that we need some clarification about a</p> <p>15 deal, and that's why it's marked that way.</p> <p>16 There's a process that goes on.</p> <p>17 There's questions that go back and forth to be</p> <p>18 able to develop the final pool. It may start as</p> <p>19 a red and yellow, and it may all end up green.</p> <p>20 And greens could end up being red, depends on</p> <p>21 information that comes back to you. It's a fluid</p> <p>22 process.</p> | <p style="text-align: right;">Page 24</p> <p>1 because -- it's a process that goes back and</p> <p>2 forth between the B-piece buyer and the</p> <p>3 originator of trying to get that deal into a</p> <p>4 pool.</p> <p>5 Q Do you know about how much American</p> <p>6 Capital has invested -- in terms of dollar amount</p> <p>7 has invested in CMBS loan pools?</p> <p>8 A You know, I don't have -- it's just a</p> <p>9 guess. You know, it's -- I think -- no.</p> <p>10 Q Over a billion dollars?</p> <p>11 A No. I would say it's underneath that.</p> <p>12 You have to define is it our investment or is it</p> <p>13 the amount of the deal?</p> <p>14 Q What I'm asking really is how much of</p> <p>15 American Capital's money was invested into the</p> <p>16 pool?</p> <p>17 A It's less than a billion dollars.</p> <p>18 Q Less than a billion. More than 500</p> <p>19 million?</p> <p>20 A Yes.</p> <p>21 Q Okay. Do you think it's more than 700</p> <p>22 million?</p>   |

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| <p style="text-align: right;">Page 25</p> <p>1 A I would say it's around that.</p> <p>2 Q Okay. And about how many pools has it</p> <p>3 invested in since it started in what you said</p> <p>4 about -- well, you've been there since 2005,</p> <p>5 correct?</p> <p>6 A '6.</p> <p>7 Q 2006. From the time you've been</p> <p>8 there, do you know how many pools it's invested</p> <p>9 in?</p> <p>10 A It's approximately 30.</p> <p>11 Q And I take it that there's varying</p> <p>12 sizes of pools?</p> <p>13 A That's correct.</p> <p>14 Q And varying --</p> <p>15 A And there's different positions in</p> <p>16 each pools.</p> <p>17 Q And varying sizes of investments?</p> <p>18 A That's correct.</p> <p>19 Q What are some of the types of issues</p> <p>20 that might make -- I know you went over this a</p> <p>21 little bit. If you could give me some specific</p> <p>22 examples of what might make a loan red.</p>   | <p style="text-align: right;">Page 27</p> <p>1 important?</p> <p>2 A I mean it helps mitigate risk, yes,</p> <p>3 from that standpoint.</p> <p>4 Q So I mean that's one of the</p> <p>5 considerations that would be made as to whether a</p> <p>6 loan is going to be placed in a pool or not?</p> <p>7 A You know, in CMBS, there's very few</p> <p>8 recourse loans. Most of them all were limited --</p> <p>9 non recourse, just for standard carve-out items.</p> <p>10 So we didn't see too many recourse loans in the</p> <p>11 deals.</p> <p>12 Q If it was a recourse loan, would that</p> <p>13 make it more attractive?</p> <p>14 A In my opinion, no.</p> <p>15 Q Why not?</p> <p>16 A Well, there's no value to the</p> <p>17 recourse. There's only value to the recourse</p> <p>18 once a loan goes bad.</p> <p>19 Q So having a separate route to try to</p> <p>20 enforce the loan if it does go bad doesn't</p> <p>21 provide extra value to the loan?</p> <p>22 A No. It would not have provided any</p> |
| <p style="text-align: right;">Page 26</p> <p>1 A As I said earlier, it could be</p> <p>2 anything from missing documentation, we don't</p> <p>3 have the file. A tenant could be -- major tenant</p> <p>4 could be rolling within the next year, and they</p> <p>5 haven't structured properly for that. A tenant's</p> <p>6 moved out during the site visit. A poor site</p> <p>7 visit. Roof is collapsing. The collateral isn't</p> <p>8 what they told us it was. They said it was a</p> <p>9 retail center, and it's actually something</p> <p>10 different. It's an office building. It's been a</p> <p>11 variety of things.</p> <p>12 Q Okay. I assume it could include a</p> <p>13 debt service coverage ratio that you weren't</p> <p>14 comfortable with?</p> <p>15 A Yes.</p> <p>16 Q Low occupancy at the building?</p> <p>17 A Yes.</p> <p>18 Q The nature of the real estate market</p> <p>19 in which the collateral is located?</p> <p>20 A Yes, but that's less likely than more</p> <p>21 of a distinct item.</p> <p>22 Q Is -- is the existence of a guaranty</p> | <p style="text-align: right;">Page 28</p> <p>1 value day one.</p> <p>2 Q No? When you say day one, what do you</p> <p>3 mean?</p> <p>4 A Day one, the day we bought the pool.</p> <p>5 Q Does it provide value at some point</p> <p>6 after that?</p> <p>7 A It only provides value when it goes</p> <p>8 into special servicing and it goes bad.</p> <p>9 Q Referring to the trust, I think you</p> <p>10 mentioned earlier that CW Capital does most of</p> <p>11 the special servicing for American Capital,</p> <p>12 right?</p> <p>13 A That's correct.</p> <p>14 Q And it's a special servicer for this</p> <p>15 particular trust?</p> <p>16 A Yes. Currently, yes.</p> <p>17 Q And you personally have worked with</p> <p>18 American -- with CW Capital quite a bit?</p> <p>19 A Absolutely, yes.</p> <p>20 Q Any particular names that you can</p> <p>21 recall of people you worked with at CW Capital?</p> <p>22 A I mean I can go down the whole roster.</p>   |

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| <p style="text-align: right;">Page 37</p> <p>1 Q And ultimately -- CW Capital is for</p> <p>2 all practical purposes the trust; is that</p> <p>3 correct?</p> <p>4 MR. CROSS: Objection.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. DOOLEY:</p> <p>7 Q It's a weird question. CW Capital as</p> <p>8 the special servicer is representing the trust;</p> <p>9 is that correct?</p> <p>10 A Yes.</p> <p>11 Q And so when you deal with CW Capital</p> <p>12 regarding a specific loan, as a practical matter,</p> <p>13 are you dealing with the representative of the</p> <p>14 trust?</p> <p>15 A Yes.</p> <p>16 Q I'm not trying to trick you.</p> <p>17 A Yeah.</p> <p>18 Q Are you familiar with a loan that's in</p> <p>19 the trust that was made by what was then called</p> <p>20 Artesia, it's now called Dexia, to MP Operating,</p> <p>21 LLC, and Annex Operating, LLC?</p> <p>22 A Yes.</p>  | <p style="text-align: right;">Page 39</p> <p>1 Q Okay. I'm just -- I'm making sure you</p> <p>2 personally would have reviewed that information.</p> <p>3 A On that specific deal, probably.</p> <p>4 Q Okay. And do you recall what the</p> <p>5 strengths of that loan were?</p> <p>6 A Yes.</p> <p>7 Q Okay. What's your recollection of</p> <p>8 what those strengths were?</p> <p>9 A That it was fairly newly purchased.</p> <p>10 There was a-million-8 of hard equity in the deal</p> <p>11 and that Artesia had structured around some of</p> <p>12 the credit concerns.</p> <p>13 Q How had they structured around some of</p> <p>14 the credit concerns?</p> <p>15 A They had a master lease from the</p> <p>16 borrower for I think it was three years. They</p> <p>17 had holdbacks for earnouts. They had a full</p> <p>18 recourse.</p> <p>19 Q A full recourse guaranty?</p> <p>20 A That's correct.</p> <p>21 Q What were the weaknesses of the loan,</p> <p>22 the Marketplace loan?</p>   |
| <p style="text-align: right;">Page 38</p> <p>1 Q Is that commonly referred to as the</p> <p>2 Marketplace loan?</p> <p>3 A We refer to it as Marketplace Retail.</p> <p>4 Q Marketplace Retail. If I refer to it</p> <p>5 as the Marketplace loan or Marketplace Retail, we</p> <p>6 understand that that's the loan we're talking</p> <p>7 about?</p> <p>8 A Yes.</p> <p>9 Q Do you remember at what point you</p> <p>10 became aware of the Marketplace Retail loan?</p> <p>11 Very first time you became aware of it?</p> <p>12 A At -- after purchasing the bonds, I</p> <p>13 was probably aware of it because I probably</p> <p>14 assigned the rating to it and had conversations</p> <p>15 back and forth with Artesia on it.</p> <p>16 Q So you would have had direct</p> <p>17 conversations with Artesia?</p> <p>18 A That's correct.</p> <p>19 Q And you would have reviewed whatever</p> <p>20 information American Capital had determined it</p> <p>21 needed regarding the loan?</p> <p>22 A To the best of my ability, yeah.</p> | <p style="text-align: right;">Page 40</p> <p>1 A The weaknesses, why we made it red</p> <p>2 was -- I think historically the operations were</p> <p>3 choppy in terms of cash flow. It was anchored by</p> <p>4 a K-Mart, which at the time K-Mart wasn't the</p> <p>5 best credit. And it was a mixed use. I remember</p> <p>6 it being mixed use. It's not just strict office.</p> <p>7 It's office, retail, and some other components to</p> <p>8 it.</p> <p>9 Q I'm actually just curious. Mixed use</p> <p>10 is typically considered not as good collateral?</p> <p>11 A Yes, because it's harder to manage and</p> <p>12 harder to lease because you have different</p> <p>13 functions within the deal.</p> <p>14 Q Do you recall American Capital asking</p> <p>15 specifically for more information about the loan</p> <p>16 from the originator?</p> <p>17 A Yes.</p> <p>18 Q And what kind of information did</p> <p>19 American Capital ask for?</p> <p>20 A You know, I don't remember.</p> <p>21 Q You just remember that questions were</p> <p>22 asked?</p> |



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| <p style="text-align: right;">Page 41</p> <p>1 A Yes, because I remember it was rated<br/>2 red to start. So then obviously there was going<br/>3 to be conversations going back and forth.<br/>4 Q Were those issues that you just<br/>5 mentioned that were weaknesses, those were the<br/>6 reasons it was rated as red?<br/>7 A I believe so.<br/>8 Q And just to be clear, red meant that<br/>9 as of that time at least --<br/>10 A We were having major problems with the<br/>11 deal.<br/>12 Q Okay. Is there a term that's common<br/>13 with regard to the formation of these -- kick-out<br/>14 of the loan? I'll be honest. I see it all over<br/>15 several documents where people refer to kicking<br/>16 out a loan. I'm just curious if that's something<br/>17 you're familiar with.<br/>18 A A kick-out is somewhat of a standard<br/>19 term. It's a weird term. It's more of a removal<br/>20 of a loan from a pool.<br/>21 Q Does red mean that it's at least at<br/>22 that time being slated for kick-out?</p> | <p style="text-align: right;">Page 43</p> <p>1 2006; is that right?<br/>2 A Yes.<br/>3 Q And reading through the first couple<br/>4 lines, it says, "The following questions have<br/>5 been submitted by the B-buyer regarding the<br/>6 above-referenced loan." Is B-buyer, do you<br/>7 understand that to refer to American Capital?<br/>8 A Yes.<br/>9 Q Because subject is "Marketplace Retail<br/>10 and Office Center," right?<br/>11 A Yes.<br/>12 Q And then in smaller font, it says,<br/>13 "Need details of the full recourse guaranty and<br/>14 how it burns off. Previous owner never achieved<br/>15 an occupancy over 75 percent. Need info on the<br/>16 full recourse burn-off. Tired retailed.<br/>17 Unappealing office space." First of all, do you<br/>18 recall that being an issue that the previous<br/>19 owner had never achieved over 75 percent<br/>20 occupancy?<br/>21 A Yes. As I stated earlier, I think it<br/>22 was choppy cash flow operations historically.</p> |
| <p style="text-align: right;">Page 42</p> <p>1 A No, no. The kick-outs, like I said<br/>2 earlier, are not determined really until we<br/>3 finalize the pool. The initial ratings that<br/>4 things receive really are to more generate the<br/>5 conversation back and forth.<br/>6 Q So let's look at Exhibit 1. Your<br/>7 attorney has put in front of you what we<br/>8 previously marked as Exhibit 1, and it will be<br/>9 Exhibit 1 for your deposition as well.<br/>10 MR. CROSS: It's Cooper Exhibit 1 so<br/>11 the record is clear.<br/>12 BY MR. DOOLEY:<br/>13 Q Have you read it?<br/>14 A Yeah.<br/>15 Q Do you know who Melissa Duncan is?<br/>16 A I do not.<br/>17 Q Okay. Just for the record, this is an<br/>18 e-mail from Melissa Duncan to Doug Sindak. Do<br/>19 you know who Doug Sindak is?<br/>20 A The name sounds familiar, but I'm not<br/>21 sure who that is.<br/>22 Q Okay. And it's dated September 22nd,</p>   | <p style="text-align: right;">Page 44</p> <p>1 Q So choppy cash flow is to you kind of<br/>2 synonymous?<br/>3 A Right, because occupancy obviously<br/>4 ties into cash flows.<br/>5 Q Do you recall this specific question<br/>6 regarding the recourse guaranty being asked?<br/>7 A As of today, no, I don't remember.<br/>8 Q Just no specific recollection of that?<br/>9 A It's seven years ago. No.<br/>10 Q Do you know what it means when it asks<br/>11 "need details of the full recourse guaranty and<br/>12 how it burns off"?<br/>13 A Yes.<br/>14 Q What does -- what does the burn-off<br/>15 part refer to?<br/>16 A Burn-off refers to how -- there are<br/>17 certain triggers for the recourse to be released.<br/>18 And we were probably asking questions on, you<br/>19 know, what specifics does the borrower need to<br/>20 achieve to be able to have it go away.<br/>21 Q When you say it go away --<br/>22 A The recourse.</p>   |

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| <p style="text-align: right;">Page 77</p> <p>1 a full recourse guaranty in a loan?</p> <p>2 A When the loan goes into default,</p> <p>3 absolutely.</p> <p>4 Q So you never know when a loan</p> <p>5 originated whether it's going to go into default,</p> <p>6 do you?</p> <p>7 A You want them all to perform.</p> <p>8 Q When a loan is securitized, you don't</p> <p>9 know whether it's going to go into default,</p> <p>10 correct?</p> <p>11 A You think they're all going to</p> <p>12 perform.</p> <p>13 Q Would you view having a full recourse</p> <p>14 guaranty almost like having an insurance policy,</p> <p>15 that it's another way to collect the money if</p> <p>16 needed?</p> <p>17 A In my opinion, no, because at that</p> <p>18 point when the deal goes into default, you have</p> <p>19 no idea what the value of that recourse is.</p> <p>20 Borrowers typically send money -- get divorced,</p> <p>21 things happen where their net worth and liquidity</p> <p>22 goes away. You have no idea. You know what</p> | <p style="text-align: right;">Page 79</p> <p>1 Cooper, "At least the loan is full recourse." Do</p> <p>2 you know why he would have said that?</p> <p>3 A I think probably because now the loan</p> <p>4 is likely going to be transferred into special</p> <p>5 servicing because they were in monetary default</p> <p>6 at that point. And that may be, you know, a way</p> <p>7 to get the borrower to come current.</p> <p>8 Q Would you say that he's expressing</p> <p>9 that there's some benefit to having the loan be</p> <p>10 full recourse?</p> <p>11 A It potentially could be a benefit at</p> <p>12 this point.</p> <p>13 Q And he's responding to Mr. Cooper</p> <p>14 saying, "That's a sorry looking center," right?</p> <p>15 A Yes.</p> <p>16 Q And he says, "Minnesota too," which he</p> <p>17 and I discussed that. I'm sure you don't know</p> <p>18 exactly what that means.</p> <p>19 A Well, actually Evan's from Minnesota.</p> <p>20 So there might have been some bantering back and</p> <p>21 forth.</p> <p>22 Q Do you know whether it's particularly</p>   |
| <p style="text-align: right;">Page 78</p> <p>1 their net worth and liquidity is the day it's</p> <p>2 originated. You have no idea when that recourse</p> <p>3 event occurs three or four years down the road</p> <p>4 what you're going to get out of it.</p> <p>5 Q So you're saying you really don't</p> <p>6 assign any value to a full recourse guaranty?</p> <p>7 A That's right.</p> <p>8 Q And yet there's much talk about it --</p> <p>9 A That's right.</p> <p>10 Q -- in these e-mails and reports,</p> <p>11 correct?</p> <p>12 A I think you summarized it well when</p> <p>13 you said use it as a threat. Absolutely. Make</p> <p>14 your payments.</p> <p>15 MR. CROSS: You want 9?</p> <p>16 MR. DOOLEY: Yes.</p> <p>17 BY MR. DOOLEY:</p> <p>18 Q So this is an e-mail -- the top one is</p> <p>19 an e-mail from Evan Kurtz to Doug Cooper and</p> <p>20 yourself on February 2010, right?</p> <p>21 A Right.</p> <p>22 Q And Mr. Kurtz says to you and Mr.</p>  | <p style="text-align: right;">Page 80</p> <p>1 difficult to foreclose on collateral in Minnesota</p> <p>2 as compared to other states?</p> <p>3 A You know, I don't have specific</p> <p>4 knowledge, but certain states make it more</p> <p>5 difficult to get to the collateral. I'm not sure</p> <p>6 if there's a redemption period in that state or</p> <p>7 not.</p> <p>8 Q So do you feel like American Capital</p> <p>9 saw some benefit to having a full recourse</p> <p>10 guaranty at least with regard to this loan?</p> <p>11 MR. CROSS: Objection. At what point</p> <p>12 in time?</p> <p>13 THE WITNESS: Yeah. At what point in</p> <p>14 time? As I stated earlier, day one it had no</p> <p>15 value. When it went into monetary default, we</p> <p>16 can use it as a tool to try to get the</p> <p>17 borrower -- we're going to come after you if you</p> <p>18 don't bring this current. There were four</p> <p>19 guarantors here. Hopefully somebody stepped up</p> <p>20 to the plate. And if not, we're going to come</p> <p>21 after you. We typically don't have that hook on</p> <p>22 any other deal because it's not recourse.</p> |



JAMES SHEVLIN  
U.S. BANK NATIONAL -vs- DEXIAJanuary 29, 2014  
81-84

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| <p style="text-align: right;">Page 81</p> <p>1 BY MR. DOOLEY:</p> <p>2 Q Would this loan have been securitized</p> <p>3 in this pool if that full guaranty wasn't</p> <p>4 present?</p> <p>5 A As I stated earlier, I don't think --</p> <p>6 it helped mitigate the risk, but I believe it</p> <p>7 would have been securitized anyway. I think what</p> <p>8 was the real trigger to get this thing</p> <p>9 securitized was when they added the additional</p> <p>10 300,000 of earnout reserve after that tenant</p> <p>11 moved out. You're guaranteed rent for a period</p> <p>12 of time. Cash in hand is better to us than</p> <p>13 having to go fight for a guaranty.</p> <p>14 Q Do you -- are you familiar with the --</p> <p>15 so getting back to the Stearns County -- the</p> <p>16 Minnesota litigation that I referred to earlier,</p> <p>17 and I don't remember where we left off on it. So</p> <p>18 just to backtrack, do you have an understanding</p> <p>19 of why that litigation was brought?</p> <p>20 A No.</p> <p>21 Q Do you know who filed the lawsuit?</p> <p>22 A No.</p> | <p style="text-align: right;">Page 83</p> <p>1 Q Do you know when the borrowers made</p> <p>2 the trust aware that that was their position?</p> <p>3 A No.</p> <p>4 Q Go ahead and look at 10.</p> <p>5 A Okay. So this looks like a document</p> <p>6 between CW Capital and counsel.</p> <p>7 Q So Joe Diggs I will tell you is a --</p> <p>8 not an attorney but a representative that the</p> <p>9 borrowers and guarantors hired to try to</p> <p>10 negotiate a resolution.</p> <p>11 A A workout consultant?</p> <p>12 Q Yes. And if you'll look at the third</p> <p>13 paragraph down, it says, "Further, you have</p> <p>14 mentioned in previous correspondence that the</p> <p>15 loan is full recourse to the guarantors." Do you</p> <p>16 recall Mr. Shearer making those representations?</p> <p>17 A To them, no.</p> <p>18 Q So you didn't have any knowledge</p> <p>19 specific to Mr. Shearer telling them Hey, this is</p> <p>20 a full recourse loan?</p> <p>21 A There could have been correspondence,</p> <p>22 I guess, between us. But no, I don't remember</p>                          |
| <p style="text-align: right;">Page 82</p> <p>1 Q So I'll represent to you that the</p> <p>2 trust filed the lawsuit as a result of the</p> <p>3 default of the borrowers.</p> <p>4 A Okay. That rings a bell. I know the</p> <p>5 borrower was thinking of suing for the reserves</p> <p>6 too. So I'm not sure which one you were</p> <p>7 referring to. That's why.</p> <p>8 Q Okay. Do you now recall that the</p> <p>9 trust did sue to enforce the rights and remedies</p> <p>10 under the loan document?</p> <p>11 A Yes.</p> <p>12 Q Do you know what the outcome of that</p> <p>13 lawsuit was?</p> <p>14 A Yes.</p> <p>15 Q What was it?</p> <p>16 A That the court determined that</p> <p>17 recourse was not in existence.</p> <p>18 Q And is it your understanding that the</p> <p>19 borrowers argued that they did not sign a full</p> <p>20 recourse guaranty?</p> <p>21 A I believe that's what -- yes, that's</p> <p>22 what they were claiming.</p>  | <p style="text-align: right;">Page 84</p> <p>1 that specifically.</p> <p>2 Q So you don't remember American Capital</p> <p>3 having any input into correspondence between CW</p> <p>4 Capital and the borrowers?</p> <p>5 A We never would have sent e-mails to</p> <p>6 the borrowers.</p> <p>7 Q I know American Capital wouldn't.</p> <p>8 What I'm asking is, at this point when this</p> <p>9 dispute was beginning, did American Capital give</p> <p>10 any direction to CW Capital regarding</p> <p>11 correspondence with the borrowers?</p> <p>12 A No.</p> <p>13 Q Okay. So he goes on to say, "Upon</p> <p>14 review of the executed loan document (limited</p> <p>15 recourse obligations guaranty) the recourse is</p> <p>16 limited in a manner whereas the guarantors,</p> <p>17 jointly and severally, are only" liable -- "are</p> <p>18 only personally liable for all losses, costs,</p> <p>19 damages, and expenses incurred by lender in the</p> <p>20 following instances." And then I'm not going to</p> <p>21 read it out loud. I'm let you read.</p> <p>22 A The bad boy carve-outs.</p> |

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U.S. BANK NATIONAL -vs- DEXIA

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85-88

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|---|---|
| <p style="text-align: right;">Page 85</p> <p>1 Q You understand those are basically bad</p> <p>2 boy carve-outs?</p> <p>3 A Right.</p> <p>4 Q And so would you take this to mean</p> <p>5 that the borrowers at this point on May 26, 2010</p> <p>6 are informing the trust that they do not believe</p> <p>7 the loan -- that they do not believe it's a full</p> <p>8 recourse guaranty?</p> <p>9 A You know, borrowers try everything to</p> <p>10 throw against the wall to see what sticks too.</p> <p>11 And obviously this guy's not an attorney. I</p> <p>12 would never -- I would give it zero worth.</p> <p>13 Q So you don't give it any worth?</p> <p>14 A No.</p> <p>15 Q I think we can agree that they've at</p> <p>16 least made their argument at this point, correct?</p> <p>17 MR. CROSS: Objection.</p> <p>18 THE WITNESS: The borrower didn't.</p> <p>19 This consultant did.</p> <p>20 BY MR. DOOLEY:</p> <p>21 Q Mr. Diggs?</p> <p>22 A Right, who is probably compensated</p>        | <p style="text-align: right;">Page 87</p> <p>1 is -- this is fact, and you know, personally this</p> <p>2 has no weight for us. We get letters all the</p> <p>3 time from workout consultants alleging so many</p> <p>4 different things that we have loan docs. His</p> <p>5 interpretation is worthless to us.</p> <p>6 Q That still doesn't answer my question</p> <p>7 though. Do you not understand what he's saying?</p> <p>8 MR. CROSS: I think it does. Let's</p> <p>9 not argue with him.</p> <p>10 MR. DOOLEY: It doesn't.</p> <p>11 MR. CROSS: You've asked it now five</p> <p>12 times.</p> <p>13 MR. DOOLEY: Because he hasn't</p> <p>14 answered it.</p> <p>15 MR. CROSS: He never saw the document.</p> <p>16 The document speaks for itself, and you're asking</p> <p>17 him to now -- he's told you five times -- we can</p> <p>18 read them all back. This is a workout</p> <p>19 consultant's assertion. That's what he said. He</p> <p>20 doesn't know if it's the guarantor's assertion.</p> <p>21 He said it's a workout consultant's assertion.</p> <p>22 They see it all the time.</p>        |
| <p style="text-align: right;">Page 86</p> <p>1 only if he gets a deal done.</p> <p>2 Q And I understand all that. By this</p> <p>3 language, do you understand the guarantors to at</p> <p>4 least be alleging that the loan is not full</p> <p>5 recourse?</p> <p>6 A No, no. They -- no. Because I think</p> <p>7 he's picking and choosing different parts of the</p> <p>8 loan to emphasize. They also had probably a bad</p> <p>9 boy carve-out requirement. He just neglected to</p> <p>10 include his recourse provisions in this note.</p> <p>11 Q Regardless of whether he's right or</p> <p>12 wrong --</p> <p>13 A Yeah.</p> <p>14 Q -- what is your understanding of what</p> <p>15 he's saying?</p> <p>16 A I think --</p> <p>17 Q If I said that wall is red, do you</p> <p>18 understand me to be saying that wall is red?</p> <p>19 A Yes.</p> <p>20 Q Even though it's not red?</p> <p>21 A Right. He's picking and choosing</p> <p>22 points he wants within the deal to -- to say this</p> | <p style="text-align: right;">Page 88</p> <p>1 MR. DOOLEY: That doesn't answer what</p> <p>2 his understanding of the position is.</p> <p>3 THE WITNESS: I'm saying he's picking</p> <p>4 and choosing certain points within the loan docs</p> <p>5 to state this one fact. Yes, they have bad boy</p> <p>6 carve-outs too. They have to make sure that they</p> <p>7 don't commit -- steal funds and cause</p> <p>8 environmental harm and misappropriate different</p> <p>9 things and cause harm. That is true. That's</p> <p>10 absolutely true.</p> <p>11 But he also neglected to include his</p> <p>12 recourse requirement in the deal. He also</p> <p>13 doesn't mention his -- his points -- where are</p> <p>14 the points about the reserves that the borrower's</p> <p>15 fighting to get back every dime. He just picks</p> <p>16 and chooses what he wants to write.</p> <p>17 BY MR. DOOLEY:</p> <p>18 Q Okay. But I'm asking you if you have</p> <p>19 an understanding of what point he's trying to</p> <p>20 convey.</p> <p>21 MR. CROSS: Objection. He's answered</p> <p>22 it now six times.</p> |

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U.S. BANK NATIONAL -vs- DEXIA

January 29, 2014  
109-112

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|---|--|
| <p style="text-align: right;">Page 109</p> <p>1 Q It's executed, correct?</p> <p>2 A Yes.</p> <p>3 Q So I know we had a little disagreement</p> <p>4 over whether we could interpret that -- an e-mail</p> <p>5 in the past. Is there any doubt in your mind</p> <p>6 that the guarantors are telling the trust in this</p> <p>7 e-mail we feel that the loan is not full</p> <p>8 recourse?</p> <p>9 A I don't really care what the borrower</p> <p>10 is saying. The borrower is in default. They</p> <p>11 signed a recourse document. I have no idea. The</p> <p>12 borrower could have fabricated and cut and pasted</p> <p>13 this themselves.</p> <p>14 Q Absolutely.</p> <p>15 A I have no idea.</p> <p>16 Q Is it your understanding that they are</p> <p>17 taking the position that they did not sign a full</p> <p>18 recourse guaranty?</p> <p>19 MR. CROSS: Based upon?</p> <p>20 BY MR. DOOLEY:</p> <p>21 Q Based upon this e-mail with the</p> <p>22 attached guaranty. When I say they, I mean the</p>   | <p style="text-align: right;">Page 111</p> <p>1 position here in August 26, 2010, and provided</p> <p>2 this document, this guaranty, why didn't a</p> <p>3 repurchase demand go out at this time?</p> <p>4 A Because -- just because the borrower</p> <p>5 is stating it does not mean it's a fact. The</p> <p>6 fact did not occur until the judge ruled that</p> <p>7 there was no recourse in place. This is not a</p> <p>8 fact. If the borrower also said I'm going to,</p> <p>9 you know, send you payments and do that, are we</p> <p>10 going to believe that too until he does it? Just</p> <p>11 because they state it doesn't mean it's a fact.</p> <p>12 Q Okay. At this point would it have</p> <p>13 been prudent to contact Dexia to see if they had</p> <p>14 any insight into --</p> <p>15 A In my opinion, no.</p> <p>16 Q Why?</p> <p>17 A Because it's not the fact. We have</p> <p>18 the loan documents. We knew it was a full</p> <p>19 recourse loan. Wells -- Wachovia verified that</p> <p>20 they had not, you know, taken that full recourse</p> <p>21 away. Just because the borrower is stating it</p> <p>22 because he probably got pressure from us, from</p> |
| <p style="text-align: right;">Page 110</p> <p>1 borrowers and --</p> <p>2 A I'm going to have to go back to what I</p> <p>3 said before. They're going to throw everything</p> <p>4 against the wall to see what sticks and not. You</p> <p>5 know, they're going to assert a bunch of</p> <p>6 different things. They're in default. They</p> <p>7 don't want us to come after them personally, and</p> <p>8 they're going to try and fight tooth and nail,</p> <p>9 and we're going to fight tooth and nail to prove</p> <p>10 that recourse is in place.</p> <p>11 Q Absolutely. I would do the same.</p> <p>12 A Yes.</p> <p>13 Q My question is, are they taking a</p> <p>14 position in this e-mail with regard to whether</p> <p>15 they signed a full recourse guaranty? I'm not</p> <p>16 asking whether they're right. I'm not asking</p> <p>17 whether they have a legal claim. I'm not asking</p> <p>18 you to give me anything other than is that the</p> <p>19 position they're taking? I'm not trying to trick</p> <p>20 you.</p> <p>21 A I guess. I don't know.</p> <p>22 Q And my question is, if they took that</p> | <p style="text-align: right;">Page 112</p> <p>1 the trust, that we're going after you personally,</p> <p>2 and now he's trying to, you know, state a</p> <p>3 different fact.</p> <p>4 Q So then --</p> <p>5 A That's why we're going to court.</p> <p>6 Q Is it your opinion then that they're</p> <p>7 actually -- that the loan is full recourse?</p> <p>8 A Absolutely.</p> <p>9 Q So the loan is full recourse?</p> <p>10 A On this date, absolutely. Until the</p> <p>11 judge ruled it was not a recourse loan, it was</p> <p>12 full recourse in our opinion. Just because the</p> <p>13 borrower stated it doesn't mean it's factual.</p> <p>14 Q So what is your understanding of what</p> <p>15 the judge's ruling is based on?</p> <p>16 A You know, I don't have that -- I just</p> <p>17 know the outcome was that the judge ruled that</p> <p>18 there was not a recourse in place. The borrower</p> <p>19 has nothing to lose by putting this e-mail out</p> <p>20 there.</p> <p>21 Q And I'm sorry. Remind me again why</p> <p>22 you said it wouldn't be useful to contact Dexia</p>   |